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PETITION to the COMMISSIONER ACCORDING TO 37 CFR 1.181

Re. USPTO Appl. No: 09/646,764
PCT Designation: PCT/AU98/00199
Int. Filing Date : July 17, 1995
IA Filing Date: 14 November 00

RECEIVED

19 MAR 2003

International Division

Action sought by the Applicant:

To withdraw the holding of abandonment (Annex 1) under the provisions of 37 CFR 1.181 -no abandonment in fact.

Background:

22 September 2000

Applicant filed Transmittal Letter (PTO 1390), Statement claiming small entity (PTO SB 10), Fee Sheet (charged to Applicant's account with USPTO), Declaration (PTO SB 01-2) (Annexes 5-10)

14 November 2000

USPTO (Pat Booker, Paralegal) mailed NOTIFICATION OF ABANDONMENT to Applicant (Annex 4) Grounds: "Agent not authorized (filing fee) "

20 December 2000

Applicant's petition filed *to withdraw the holding of abandonment.* (Annex 3)

20 April 2001

USPTO (B. Milef & R.M. Ross, PCT Legal Office) mails office action granting the petition of the Applicant (Annex 2).

15 November 2002

USPTO (Patricia Booker) mailed NOTIFICATION OF ABANDONMENT to Applicant (Annex 1). Grounds: Applicant failed to respond to the notification of MISSING REQUIREMENTS within the time period set therein.

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21-4

Discussion:

Perusal of **Annex 2** indicates that in accord with the decision of granting the petition the PCT Legal Office was to forward the application to the National Stage Processing Branch of the Office of PCT Operations for further processing including the mailing of a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring submission of a declaration in compliance with 37 CFR 1.497 and a surcharge for late filing.

The Applicant has never received such a form from the USPTO relating to the present application.

If the material was sent, then apart from the rare case of going astray on route (lost in the post) it must have been returned to the USPTO as undeliverable or because of insufficient stamp tax. If this is not the case then from the standpoint of the Applicant the material was never sent by the USPTO.

With regard to compliance with 37 CFR 1.497 it should be noted that the applicant in previous Application No. 09/242,072 submitted **Declarations Forms** PTO/SB/01-2 filed 14 January 2000 which were deemed by the PCT Legal Office to fully comply with the requirements of 37 CFR 1.497.

The same Forms were completed and submitted in a similar manner in the present Application (**Annexes 8 & 9**).

Conclusions

There would seem to be 2 possible courses of action:

1. The *missing requirements* alleged to have been mailed 3 May 01 should be mailed once again per **recorded delivery** to the new address given below, whereby the process as of 3 May 01 should be restarted with a current new date of mailing and the present holding of abandonment withdrawn..
2. The Applicant's claim that there are no *missing requirements* regarding formalities in the application as illustrated in Annexes 5-9 should be reconsidered and if conceded the present holding of abandonment should be withdrawn and the normal examination procedure started.

Complaint

The Applicant and Inventor formally requests the USPTO to desist in an apparent vexatious attempt to harass and discourage him in his prosecution of this and other applications

It is now 21/2 years since the filing of the transmittal letter of the present application with all other required material, including the Declaration in question, for entry into the national stage in the United States. The previous application 09/242072 took nearly 2 years from filing of transmittal letter to the start of national stage processing.

If the processing of the present application were *bona-fide*, instead of forwarding two successive, arbitrary Notifications of Abandonment within an interval of 2 years thus forcing the Applicant to file two successive Petitions, the PO pursuant to 37 CFR 1.53 (f) should have issued a single PCT/DO/EO/905 mailed 24 November 2000 listing both the alleged MISSING REQUIREMENTS, namely,

-Providing an *authorized agent* (what or who ever that is).mailed 24 November 2000
and

-Declaration requirements according to 35 USC 371 and 37 CFR 1.494 (mailed 15 November 2002)

The arbitrary imposition of the first NOTIFICATION OF ABANDONMENT 24 November 2000 (filing fee) infringed 37 CFR 1.53 (f), whereby the USPTO is obliged to *first notify the applicant* concerning the alleged missing filing fee requirement with a period of time to comply.

The alleged mailing of a NOTIFICATION OF MISSING REQUIREMENTS 3 May 2001 (alleged failing DECLARATION) also infringes 37 CFR 1.53 (f) in that it was untimely and should have been mailed to the Applicant at the latest 24 November 2000 with the alleged missing filing fee requirement. .

At the latest the whole matter should have been finally clarified by January 2001 – that is over 2 years ago!

In fact, by this time a final decision on the *allowance* as Patent should already have been made.

Unsatisfactory USPTO mailing system

Past mailed office actions associated with set periods for response and penalties including abandonment for non-compliance have caused the Applicant serious inconvenience as demonstrated by the failed receipt by Applicant of the alleged mailed 3 May 2001 Notification of Missing Requirements in this Petition.

In all past mailed responses or initiatives by the Applicant to the USPTO associated with a set time period for response or an important content the communications have been mailed by *RECORDED DELIVERY*.

This is the minimum legal certification of receipt required in most civilized countries and sets and certifies the exact *date and time of receipt*.

In the past there have been delays of 4-6 weeks in the delivery of USPTO mail to the applicant.

Previously, the date of mailing stamped on the envelope by the US Post was available to the Applicant giving some degree of certification, however, more recently the USPTO has gone over to a system of bulk mailing to Europe through Holland whereby no stamped mailing date is shown on the face of the envelope (**Annex 10**).

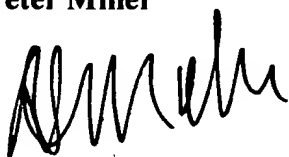
This is unacceptable as the experience of the Applicant is that any printed or written mailing date on an office action made by the USPTO personnel themselves is highly unreliable and legally dubious.

To assure certification of receipt of USPTO mail and provide a just starting date for any period of time set for response the mail should be by *recorded delivery*.

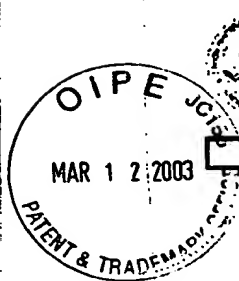
The applicant is willing to pay the mailing costs for recorded delivery of any further key USPTO office actions.

The Applicant hereby grants the USPTO powers of attorney over his deposit account **501200** to meet any costs that may accrue in this application including recorded delivery mailed office actions.

Peter Miller



ANNEX 7



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents, Box PCT
United States Patent and Trademark Office
Washington, D.C. 20590
http://uspto.gov

U.S. APPLICATION NUMBER NO. 09/646,764	FIRST NAMED APPLICANT Peter Miller	ATTY. DOCKET NO.
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INTERNATIONAL APPLICATION NO. PCT/AU98/00199

LA. FILING DATE 03/26/1998	PRIORITY DATE
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CONFIRMATION NO. 7131

371
ABANDONMENT/TERMINATION
LETTER



OC000000009111452

Date Mailed: 11/15/2002

NOTIFICATION OF ABANDONMENT

The United States Patent and Trademark Office in its capacity as a Designated Office (37 CFR 1.494), has made the following determination:

- Applicant has failed to respond to the notification of MISSING REQUIREMENTS, mailed 05/03/2001 within the time period set therein.

Therefore, the above identified application failed to meet the requirements of 35 U.S.C. 371 and 37 CFR 1.494, and is ABANDONED AS TO THE UNITED STATES OF AMERICA.

PATRICIA A BOOKER

Telephone: (703) 305-3738

PART 3 - OFFICE COPY

FORM PCT/DO/EO/009 (371 Abandonment Notice)